IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 25378-M of 2004

DATE OF DECISION : 29.08.2006

Ranbir Singh and others

.... PETITIONERS

Versus

State of Haryana

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Dr. Parveen Hans, Advocate,
for the petitioners.

Mr. Partap Singh, Senior D.A.G., Haryana.

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The petitioners have filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `the Code') for setting aside the order dated 11.11.2002 passed by Judicial Magistrate Ist Class, Hansi, whereby the petitioners were charged under Section 188 IPC in case FIR No. 54 dated 1.3.2002 registered at Police Station Narnaund and the order dated 1.10.2003, passed by Additional Sessions Judge, Hisar, whereby the revision filed by the petitioners against the aforesaid order has been dismissed.

In this case, vide order dated 18.12.2001, Sub Divisional Magistrate, Hansi directed the petitioners under Section 133 of the Code to remove the obstruction in the village street, due to which water was accumulating there. When the said direction was not complied with, Sub Divisional Magistrate, Hansi lodged the aforesaid FIR against the petitioners under Section 188 IPC.

After investigation, the police submitted the challan in the court and the trial court, on the basis of the material collected during the investigation, framed charge against the petitioners under Section 188 IPC, vide order dated 11.11.2002. This order has been upheld by the revisional court.

The sole contention of counsel for the petitioners is that in view

of Section 195 (1) (a) (i) of the Code, no cognizance of the offence under Section 188 IPC can be taken by the Court except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Learned counsel for the petitioners submits that for this offence, the complaint in writing has to be presented directly to the concerned court, and on his complaint an FIR cannot be registered by the police. The scope of Section 195 (1) of the Code does not contemplate investigation in normal way by the police and filing of the challan, but the complaint has to be presented directly to the concerned court. He submits that Section 195 of the Code is a bar not only to the Court for taking cognizance of the offence without a complaint in writing, but is also a bar to the registration and investigation into this offence by the police. Therefore, the trial court has committed grave illegality while taking cognizance of the offence under Section 188 IPC and framing charge against the petitioners on the challan submitted by the police. In support of his contention, counsel for the petitioners relied upon a decision of this Court in ***Jagtar Singh*** v. ***Union Territory, Chandigarh,*** 1996 (1) Recent Criminal Reports 669.

I have heard counsel for the parties.

A similar contention was raised by the petitioners before the revisional court, which was rejected by it vide impugned order dated 1.10.2003, while observing as under :-

> "I am not convinced with the arguments advanced by the learned counsel for the accused/revisionists. It is suffice to point out that vide notification no. 21/29/78-JJ (8) dated 3.2.1986, the offence u/s 188 IPC is made cognizable and non bailable. Hence, the police was competent to take cognizance of the offence on receiving of a complaint made by S.D.M., Hansi vide letter dated 1.2.02 placed on file. Moreover, the notification No. 21/29/78-JJ (8) dated 3.2.1986 was passed in exercise of the powers conferred by sub section (1) and (2) of section 10 of the Criminal law amendment Act, 1932 (Act XXIII of 1932) and the offence punishable u/s 188 IPC was made cognizable and non bailable notwithstanding anything

> contained in Cr.P.C. Hence, the analogy can be drawn that if the police can take cognizance then it can certainly file a challan u/s 173 Cr.P.C. in the court after completion of the investigation. Taking cognizance by the police without having any power to file a challan subsequently, after completion of the investigation will make the notification dated 3.2.1986 nugatory. Moreover, during the investigation the police has collected evidence which prima facie shows that the accused/ revisionists have committed offence under section 188 IPC. Accordingly, the learned trial court has rightly taken cognizance and framed charge under section 188 IPC vide impugned order dated 11.11.2002. Hence, present criminal revision petition is hereby dismissed hereby upholding the impugned order dated 11.11.2002 passed by the learned trial court."

In the reply, filed by the State of Haryana, it has been stated that the State Government has issued notification dated 3.2.1986 in exercise of the power conferred by sub-sections (1) and (2) of Section 10 of the Criminal Law Amendment Act, 1932, whereby the offence under Section 188 IPC has been made cognizable and non bailable. It has been stated that in view of the said notification, the police is competent to register a case against the accused under Section 188 IPC on a written complaint made by the Sub Divisional Magistrate, whose order under Section 133 of the Code was violated.

In view of the aforesaid specific notification, even for an offence under Section 188 IPC, a complaint can be made by the Sub Divisional Magistrate for violation of his order to the police under Section 156 of the Code for registration of the case. The factum of issuance of notification has not been disputed by counsel for the petitioners. The judgment cited by the learned counsel pertains to Union Territory, Chandigarh. No such notification has been issued by the Union Territory, Chandigarh. Therefore, in my opinion, on facts, the aforesaid judgment is not applicable to the facts of the instant case.

Faced with this situation, counsel for the petitioners argued that

even on merit, there was no material before the trial court for framing charge under Section 188 IPC. He submitted that the order passed by the Sub Divisional Magistrate under Section 133 of the Code was not a valid order as he did not follow the procedure prescribed under the Code before passing the said order. Even the property opportunity of being heard was not provided to the petitioners.

I do not find any substance in the aforesaid submission of counsel for the petitioners. At this stage, these questions cannot be gone into, as the trial court, on the basis of material collected during the investigation has framed the charge, which indicated that the petitioners, having the knowledge of the restraint order passed under Section 133 of the Code, had violated the same. The said order has been upheld in revision. Therefore, I do not find any ground to interfere in the impugned orders, in exercise of the power under Section 482 of the Code.

Dismissed.

August 29, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**